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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,902	07/25/2003	Roger Moons	AD6883USNA	3469
23906 7590 12/07/2007 E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			EXAMINER BECKER, DREW E	
			ART UNIT 1794	PAPER NUMBER
			NOTIFICATION DATE 12/07/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-Legal.PRC@usa.dupont.com

Office Action Summary	Application No.		Applicant(s)	
	10/627,902		MOONS, ROGER	
	Examiner		Art Unit	
	Drew E. Becker		1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The declaration under 37 CFR 1.132 filed 4/4/07 is insufficient to overcome the rejection of claims 1-10 based upon WO 01/34702A2 and Nakamichi as set forth in the last Office action because: WO 01/34702A2 taught a different filler percentage of 10% and a different type of LCP than that which was used in the declaration. It also did not identify or mention WO 01/34702A2.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of

copending Application No. 11/293,568. Although the conflicting claims are not identical, they are not patentably distinct from each other because the thermal conductivity range of '568 (ie 0.70 W/mK) encompasses the presently claimed range.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 01/34702A2.

WO 01/34702A2 teaches an ovenware item comprising a thermoplastic polymer with a filler (abstract), the filler being carbon black containing graphite (page 8, lines 8-13), up to 10% carbon black (page 9, line 11), the item inherently possessing a thermal conductivity of at least 2 W/mK, the polymer having a melting point and glass transition temperature of at least 250°C (page 5, lines 21-34), liquid crystal polymers (page 6, line 17). If not inherent, then it would have been obvious to one of ordinary skill in the art to provide more carbon black in WO 01/34702A2 since an increased amount of susceptor filler would have provided increased and faster browning of the food product during microwaving.

6. Claims 1-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nakamichi [Pat. No. 5,028,461]. Nakamichi teaches a an ovenware item comprising a thermoplastic polymer with a filler (abstract), the filler being carbon black containing graphite (column 3, line 53), up to 70% carbon black (abstract), the item inherently possessing a thermal conductivity of at least 2 W/mK, and the polymer having a heat distortion temperature of at least 270°C (column 4, line 54). If not inherent, then it would have been obvious to one of ordinary skill in the art to provide more carbon black in Nakamichi since an increased amount of susceptor filler would have provided increased and faster browning of the food product during microwaving, as well as better heat resistance, oil resistance, and mechanical strength (abstract).

Response to Arguments

7. Applicant's arguments filed 10/18/07 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the amount, thermal conductivity, and particular form of the filler) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that the WO 01/34702A2 did not provide a thermal conductivity of 1.0 W/mK. However, WO 01/34702A2 taught a carbon fibers and carbon black of up to 10% and applicant does not claim a minimum amount of filler. The declaration of Dr. Citron tested a composition with only 8% carbon fiber, rather than the 10% of WO 01/34702A2. In addition, page 4, line 5 of applicant's specification states that "Typically the high thermal conductivity filler is about 5 to about 65% by weight of the composition." Therefore, the material of WO 01/34702A2 inherently provided the desired properties absent clear evidence to the contrary.

Applicant argues that Nakamichi did not teach a sufficient amount of filler. However, Nakamichi teaches an amount of inorganic filler, such as carbon black and carbon fiber (column 3, line 53), in the amount of 10-90% of the glass fiber (column 3, line 67), with the glass fiber making up 20-70% of the composition (column 4, line 1). Clearly, 90% of 70% is 63%. Therefore, Nakamichi clearly teaches the use of up to 63% carbon fiber or carbon black. Nakamichi also teaches a minimum inorganic filler content of 40% (column 4, line 18). In addition, page 4, line 5 of applicant's specification states that "Typically the high thermal conductivity filler is about 5 to about 65% by weight of the composition."

Applicant argues that Nakamichi included a "laundry list" of inorganic fillers. However, Nakamichi only listed 14 possible choices with two of them being carbon black and carbon fibers.

Applicant argues that Nakamichi and WO 01/34702A2 did not teach the claimed invention with sufficient specificity and that the references do not inherently provide a

thermal conductivity of at least 1.0 W/mK. Therefore, the above rejections have been converted to 102/103 rejections as directed by MPEP 2131.03 and 2112.

Applicant argues that Nakmamichi was not capable of using 63% carbon black or carbon fiber. However, Nakasmichi clearly states that 20-70% of the resin composition was filler (glass fiber and other), and that the amount of other filler (for instance carbon black) was present in an amount of 10-90% of the weight of the glass fiber (column 3, line 56 to column 4, line 3). Clearly, 90% of 70% is 63%. Therefore, the material of Nakamichi inherently provided the desired properties absent clear evidence to the contrary.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DREW BECKER
PRIMARY EXAMINER
12/3/07